

1 HOUSE BILL 1217

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Janice E. Arnold-Jones

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10 AN ACT

11 RELATING TO TAXATION; PROVIDING THAT INTEREST ON STATE AND
12 LOCAL BONDS THAT IS EXCLUDED FROM INCOME FOR FEDERAL INCOME TAX
13 PURPOSES WILL ALSO BE EXCLUDED FROM INCOME PURSUANT TO THE
14 INCOME TAX ACT AND THE CORPORATE INCOME AND FRANCHISE TAX ACT.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 Section 1. Section 7-2-2 NMSA 1978 (being Laws 1986,
18 Chapter 20, Section 26, as amended by Laws 2003, Chapter 13,
19 Section 1 and by Laws 2003, Chapter 275, Section 1) is amended
20 to read:

21 "7-2-2. DEFINITIONS.--For the purpose of the Income Tax
22 Act and unless the context requires otherwise:

23 A. "adjusted gross income" means adjusted gross
24 income as defined in Section 62 of the Internal Revenue Code,
25 as that section may be amended or renumbered;

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1 B. "base income":

2 (1) means, for estates and trusts, that part
3 of the estate's or trust's income defined as taxable income and
4 upon which the federal income tax is calculated in the Internal
5 Revenue Code for income tax purposes plus, for taxable years
6 beginning on or after January 1, 1991, the amount of the net
7 operating loss deduction allowed by Section 172(a) of the
8 Internal Revenue Code, as that section may be amended or
9 renumbered, and taken by the taxpayer for that year;

10 (2) means, for taxpayers other than estates or
11 trusts, that part of the taxpayer's income defined as adjusted
12 gross income plus, for taxable years beginning on or after
13 January 1, 1991, the amount of the net operating loss deduction
14 allowed by Section 172(a) of the Internal Revenue Code, as that
15 section may be amended or renumbered, and taken by the taxpayer
16 for that year;

17 (3) includes, for all taxpayers, any other
18 income of the taxpayer not included in adjusted gross income
19 but upon which a federal tax is calculated pursuant to the
20 Internal Revenue Code for income tax purposes, except amounts
21 for which a calculation of tax is made pursuant to Section 55
22 of the Internal Revenue Code, as that section may be amended or
23 renumbered; [~~"base income" also includes interest received on a~~
24 ~~state or local bond~~] and

25 (4) includes, for all taxpayers, an amount

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1 deducted pursuant to Section 7-2-32 NMSA 1978 in a prior
2 taxable year if:

3 (a) such amount is transferred to
4 another qualified tuition program, as defined in Section 529 of
5 the Internal Revenue Code, not authorized in the Education
6 Trust Act; or

7 (b) a distribution or refund is made for
8 any reason other than: 1) to pay for qualified higher
9 education expenses, as defined pursuant to Section 529 of the
10 Internal Revenue Code; or 2) upon the beneficiary's death,
11 disability or receipt of a scholarship;

12 C. "compensation" means wages, salaries,
13 commissions and any other form of remuneration paid to
14 employees for personal services;

15 D. "department" means the taxation and revenue
16 department, the secretary or any employee of the department
17 exercising authority lawfully delegated to that employee by the
18 secretary;

19 E. "fiduciary" means a guardian, trustee, executor,
20 administrator, committee, conservator, receiver, individual or
21 corporation acting in any fiduciary capacity;

22 F. "filing status" means "married filing joint
23 returns", "married filing separate returns", "head of
24 household", "surviving spouse" and "single", as those terms are
25 generally defined for federal tax purposes;

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1 G. "fiscal year" means any accounting period of
2 twelve months ending on the last day of any month other than
3 December;

4 H. "head of household" means "head of household" as
5 generally defined for federal income tax purposes;

6 I. "individual" means a natural person, an estate,
7 a trust or a fiduciary acting for a natural person, trust or
8 estate;

9 J. "Internal Revenue Code" means the United States
10 Internal Revenue Code of 1986, as amended;

11 K. "lump-sum amount" means for the purpose of
12 determining liability for federal income tax, an amount that
13 was not included in adjusted gross income but upon which the
14 five-year-averaging or the ten-year-averaging method of tax
15 computation provided in Section 402 of the Internal Revenue
16 Code, as that section may be amended or renumbered, was
17 applied;

18 L. "modified gross income" means all income of the
19 taxpayer and, if any, the taxpayer's spouse and dependents,
20 undiminished by losses and from whatever source, including:

- 21 (1) compensation;
22 (2) net profit from business;
23 (3) gains from dealings in property;
24 (4) interest;
25 (5) net rents;

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- 1 (6) royalties;
- 2 (7) dividends;
- 3 (8) alimony and separate maintenance payments;
- 4 (9) annuities;
- 5 (10) income from life insurance and endowment
- 6 contracts;
- 7 (11) pensions;
- 8 (12) discharge of indebtedness;
- 9 (13) distributive share of partnership income;
- 10 (14) income in respect of a decedent;
- 11 (15) income from an interest in an estate or a
- 12 trust;
- 13 (16) social security benefits;
- 14 (17) unemployment compensation benefits;
- 15 (18) workers' compensation benefits;
- 16 (19) public assistance and welfare benefits;
- 17 (20) cost-of-living allowances; and
- 18 (21) gifts;

19 M. "modified gross income" excludes:

- 20 (1) payments for hospital, dental, medical or
- 21 drug expenses to or on behalf of the taxpayer;
- 22 (2) the value of room and board provided by
- 23 federal, state or local governments or by private individuals
- 24 or agencies based upon financial need and not as a form of
- 25 compensation;

1 (3) payments pursuant to a federal, state or
2 local government program directly or indirectly to a third
3 party on behalf of the taxpayer when identified to a particular
4 use or invoice by the payer; or

5 (4) payments pursuant to Sections 7-2-14,
6 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

7 N. "net income" means, for estates and trusts, base
8 income adjusted to exclude amounts that the state is prohibited
9 from taxing because of the laws or constitution of this state
10 or the United States and means, for taxpayers other than
11 estates or trusts, base income adjusted to exclude:

12 (1) an amount equal to the standard deduction
13 allowed the taxpayer for the taxpayer's taxable year by Section
14 63 of the Internal Revenue Code, as that section may be amended
15 or renumbered;

16 (2) an amount equal to the itemized deductions
17 defined in Section 63 of the Internal Revenue Code, as that
18 section may be amended or renumbered, allowed the taxpayer for
19 the taxpayer's taxable year less the amount excluded pursuant
20 to Paragraph (1) of this subsection;

21 (3) an amount equal to the product of the
22 exemption amount allowed for the taxpayer's taxable year by
23 Section 151 of the Internal Revenue Code, as that section may
24 be amended or renumbered, multiplied by the number of personal
25 exemptions allowed for federal income tax purposes;

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1 (4) income from obligations of the United
2 States of America less expenses incurred to earn that income;

3 (5) other amounts that the state is prohibited
4 from taxing because of the laws or constitution of this state
5 or the United States;

6 (6) for taxable years that began prior to
7 January 1, 1991, an amount equal to the sum of:

8 (a) net operating loss carryback
9 deductions to that year from taxable years beginning prior to
10 January 1, 1991 claimed and allowed, as provided by the
11 Internal Revenue Code; and

12 (b) net operating loss carryover
13 deductions to that year claimed and allowed; and

14 (7) for taxable years beginning on or after
15 January 1, 1991, an amount equal to the sum of any net
16 operating loss carryover deductions to that year claimed and
17 allowed, provided that the amount of any net operating loss
18 carryover from a taxable year beginning on or after January 1,
19 1991 may be excluded only as follows:

20 (a) in the case of a timely filed
21 return, in the taxable year immediately following the taxable
22 year for which the return is filed; or

23 (b) in the case of amended returns or
24 original returns not timely filed, in the first taxable year
25 beginning after the date on which the return or amended return

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1 establishing the net operating loss is filed; and

2 (c) in either case, if the net operating
3 loss carryover exceeds the amount of net income exclusive of
4 the net operating loss carryover for the taxable year to which
5 the exclusion first applies, in the next four succeeding
6 taxable years in turn until the net operating loss carryover is
7 exhausted; in no event shall a net operating loss carryover be
8 excluded in any taxable year after the fourth taxable year
9 beginning after the taxable year to which the exclusion first
10 applies;

11 O. "net operating loss" means any net operating
12 loss, as defined by Section 172(c) of the Internal Revenue
13 Code, as that section may be amended or renumbered, for a
14 taxable year as further increased by the income, if any, from
15 obligations of the United States for that year less related
16 expenses;

17 P. "net operating loss carryover" means the amount,
18 or any portion of the amount, of a net operating loss for any
19 taxable year that, pursuant to Paragraph (6) or (7) of
20 Subsection N of this section, may be excluded from base income;

21 Q. "nonresident" means every individual not a
22 resident of this state;

23 R. "person" means any individual, estate, trust,
24 receiver, cooperative association, club, corporation, company,
25 firm, partnership, limited liability company, joint venture,

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1 syndicate or other association; "person" also means, to the
2 extent permitted by law, any federal, state or other
3 governmental unit or subdivision or agency, department or
4 instrumentality thereof;

5 S. "resident" means an individual who is domiciled
6 in this state during any part of the taxable year or an
7 individual who is physically present in this state for one
8 hundred eighty-five days or more during the taxable year; but
9 any individual, other than someone who was physically present
10 in the state for one hundred eighty-five days or more during
11 the taxable year, who, on or before the last day of the taxable
12 year, changed ~~[his]~~ the individual's place of abode to a place
13 without this state with the bona fide intention of continuing
14 actually to abide permanently without this state is not a
15 resident for the purposes of the Income Tax Act for periods
16 after that change of abode;

17 T. "secretary" means the secretary of taxation and
18 revenue or the secretary's delegate;

19 U. "state" means any state of the United States,
20 the District of Columbia, the commonwealth of Puerto Rico, any
21 territory or possession of the United States or any political
22 subdivision of a foreign country;

23 ~~[V. "state or local bond" means a bond issued by a~~
24 ~~state other than New Mexico or by a local government other than~~
25 ~~one of New Mexico's political subdivisions, the interest from~~

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1 ~~which is excluded from income for federal income tax purposes~~
2 ~~under Section 103 of the Internal Revenue Code, as that section~~
3 ~~may be amended or renumbered;~~

4 ~~W.]~~ V. "surviving spouse" means "surviving spouse"
5 as generally defined for federal income tax purposes;

6 ~~[X.]~~ W. "taxable income" means net income less any
7 lump-sum amount;

8 ~~[Y.]~~ X. "taxable year" means the calendar year or
9 fiscal year upon the basis of which the net income is computed
10 under the Income Tax Act and includes, in the case of the
11 return made for a fractional part of a year under the
12 provisions of the Income Tax Act, the period for which the
13 return is made; and

14 ~~[Z.]~~ Y. "taxpayer" means any individual subject to
15 the tax imposed by the Income Tax Act."

16 Section 2. Section 7-2A-2 NMSA 1978 (being Laws 1986,
17 Chapter 20, Section 33, as amended) is amended to read:

18 "7-2A-2. DEFINITIONS.--For the purpose of the Corporate
19 Income and Franchise Tax Act and unless the context requires
20 otherwise:

21 A. "affiliated group" means that term as it is used
22 in the Internal Revenue Code;

23 B. "bank" means any national bank, national banking
24 association, state bank or bank holding company;

25 C. "base income" means that part of the taxpayer's

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1 income defined as taxable income and upon which the federal
2 income tax is calculated in the Internal Revenue Code for
3 income tax purposes plus, for taxable years beginning on or
4 after January 1, 1991, the amount of the net operating loss
5 deduction allowed by Section 172(a) of the Internal Revenue
6 Code, as that section may be amended or renumbered, and claimed
7 by the taxpayer for that year [~~"base income" also includes~~
8 ~~interest received on a state or local bond~~];

9 D. "corporation" means corporations, joint stock
10 companies, real estate trusts organized and operated under the
11 Real Estate Trust Act, financial corporations and banks, other
12 business associations and, for corporate income tax purposes,
13 partnerships and limited liability companies taxed as
14 corporations under the Internal Revenue Code;

15 E. "department" means the taxation and revenue
16 department, the secretary [~~of taxation and revenue~~] or any
17 employee of the department exercising authority lawfully
18 delegated to that employee by the secretary;

19 F. "fiscal year" means any accounting period of
20 twelve months ending on the last day of any month other than
21 December;

22 G. "Internal Revenue Code" means the United States
23 Internal Revenue Code of 1986, as amended;

24 H. "net income" means base income adjusted to
25 exclude:

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1 (1) income from obligations of the United
2 States less expenses incurred to earn that income;

3 (2) other amounts that the state is prohibited
4 from taxing because of the laws or constitution of this state
5 or the United States;

6 (3) for taxable years that began prior to
7 January 1, 1991, an amount equal to the sum of:

8 (a) net operating loss carryback
9 deductions to that year from taxable years beginning prior to
10 January 1, 1991 claimed and allowed, as provided by the
11 Internal Revenue Code; and

12 (b) net operating loss carryover
13 deductions to that year claimed and allowed; and

14 (4) for taxable years beginning on or after
15 January 1, 1991, an amount equal to the sum of any net
16 operating loss carryover deductions to that year claimed and
17 allowed, provided that the amount of any net operating loss
18 carryover from a taxable year beginning on or after January 1,
19 1991 may be excluded only as follows:

20 (a) in the case of a timely filed
21 return, in the taxable year immediately following the taxable
22 year for which the return is filed; or

23 (b) in the case of amended returns or
24 original returns not timely filed, in the first taxable year
25 beginning after the date on which the return or amended return

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1 establishing the net operating loss is filed; and

2 (c) in either case, if the net operating
3 loss carryover exceeds the amount of net income exclusive of
4 the net operating loss carryover for the taxable year to which
5 the exclusion first applies, in the next four succeeding
6 taxable years in turn until the net operating loss carryover is
7 exhausted; in no event may a net operating loss carryover be
8 excluded in any taxable year after the fourth taxable year
9 beginning after the taxable year to which the exclusion first
10 applies;

11 I. "net operating loss" means any net operating
12 loss, as defined by Section 172(c) of the Internal Revenue
13 Code, as that section may be amended or renumbered, for a
14 taxable year as further increased by the income, if any, from
15 obligations of the United States for that year less related
16 expenses;

17 J. "net operating loss carryover" means the amount,
18 or any portion of the amount, of a net operating loss for any
19 taxable year that, pursuant to Paragraph (3) or (4) of
20 Subsection H of this section, may be excluded from base income;

21 K. "person" means any individual, estate, trust,
22 receiver, cooperative association, club, corporation, company,
23 firm, partnership, limited liability company, joint venture,
24 syndicate or other association; "person" also means, to the
25 extent permitted by law, any federal, state or other

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1 governmental unit or subdivision or agency, department or
2 instrumentality thereof;

3 L. "secretary" means the secretary of taxation and
4 revenue or the secretary's delegate;

5 M. "state" means any state of the United States,
6 the District of Columbia, the commonwealth of Puerto Rico, any
7 territory or possession of the United States or political
8 subdivision thereof or any political subdivision of a foreign
9 country;

10 ~~[N. "state or local bond" means a bond issued by a~~
11 ~~state other than New Mexico or by a local government other than~~
12 ~~one of New Mexico's political subdivisions, the interest from~~
13 ~~which is excluded from income for federal income tax purposes~~
14 ~~under Section 103 of the Internal Revenue Code, as that section~~
15 ~~may be amended or renumbered;~~

16 ~~Ø.]~~ N. "taxable year" means the calendar year or
17 fiscal year upon the basis of which the net income is computed
18 under the Corporate Income and Franchise Tax Act and includes,
19 in the case of the return made for a fractional part of a year
20 under the provisions of that act, the period for which the
21 return is made;

22 ~~[P.]~~ O. "taxpayer" means any corporation subject to
23 the taxes imposed by the Corporate Income and Franchise Tax
24 Act; and

25 ~~[Q.]~~ P. "unitary corporations" means two or more

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1 integrated corporations, other than any foreign corporation
2 incorporated in a foreign country and not engaged in trade or
3 business in the United States during the taxable year, that are
4 owned in the amount of more than fifty percent and controlled
5 by the same person and for which at least one of the following
6 conditions exists:

7 (1) there is a unity of operations evidenced
8 by central purchasing, advertising, accounting or other
9 centralized services;

10 (2) there is a centralized management or
11 executive force and centralized system of operation; or

12 (3) the operations of the corporations are
13 dependent upon or contribute property or services to one
14 another individually or as a group."

15 Section 3. APPLICABILITY.--The provisions of this act
16 apply to taxable years beginning on or after January 1, 2007.